Citation
547 N.Y.S.2d 627
74 N.Y.2d 372, 546 N.E.2d 920, 58 U.S.L.W. 2279

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ALBANY AREA BUILDERS ASSOCIATION et al., Respondents,
v.
TOWN OF GUILDERLAND, Appellant.
Court of Appeals of New York.
Oct. 26, 1989.

Builders and builders association brought action challenging town's transportation impact fee law. The Supreme Court, Appellate Division, 141 A.D.2d 293, 534 N.Y.S.2d 791, found the law invalid, and town appealed. The Court of Appeals, Kaye, J., held that law was preempted by state law.

Affirmed.

[1]
268K65
MUNICIPAL CORPORATIONS
K. Local legislation.
N.Y. 1989.
Lawmaking authority of a municipal corporation, which is a political subdivision of the state, can be exercised only to the extent that it has been delegated by the state. McKinney's Const. Art. 9, s 2(c)(ii).
Albany Area Builders Ass'n v. Town of Guilderland
547 N.Y.S.2d 627, 74 N.Y.2d 372, 546 N.E.2d 920, 58 U.S.L.W. 2279

[2]
268K65
MUNICIPAL CORPORATIONS
K. Local legislation.
N.Y. 1989.
So long as local legislation is not inconsistent with the State Constitution or any general law, localities may adopt local laws both with respect to their property, affairs, or government, and with respect to other enumerated subjects, except to the extent that the legislature restricts the adoption of a local law. McKinney's Const. Art. 9, s 2(c)(i, ii); McKinney's Municipal Home Rule Law s 10, subd. 1(i, ii).
Albany Area Builders Ass'n v. Town of Guilderland
547 N.Y.S.2d 627, 74 N.Y.2d 372, 546 N.E.2d 920, 58 U.S.L.W. 2279

[3]
268K65
MUNICIPAL CORPORATIONS
K. Local legislation.
N.Y. 1989.
Preemption doctrine represents fundamental limitation on home rule powers. McKinney's Const. Art. 9, s 2(c)(i, ii); McKinney's Municipal Home Rule Law s 10, subd. 1(i, ii).
Albany Area Builders Ass'n v. Town of Guilderland
547 N.Y.S.2d 627, 74 N.Y.2d 372, 546 N.E.2d 920, 58 U.S.L.W. 2279

[4]
268K65
MUNICIPAL CORPORATIONS
K. Local legislation.
N.Y. 1989.

Preemption applies both in cases of express conflict between local and state law and in cases where the state has evidenced its intent to occupy the field. McKinney's Const. Art. 9, s 2(c)(ii).
Albany Area Builders Ass'n v. Town of Guilderland
547 N.Y.S.2d 627, 74 N.Y.2d 372, 546 N.E.2d 920, 58 U.S.L.W. 2279
[5]
268K65
MUNICIPAL CORPORATIONS
K. Local legislation.
N.Y. 1989.
Where state has preempted the field, local law regulating the same subject matter is deemed inconsistent with the state's transcendent interest, whether or not the terms of the local law actually conflict with the statewide statute. McKinney's Const. Art. 9, s 2(c)(ii).
Albany Area Builders Ass'n v. Town of Guilderland
547 N.Y.S.2d 627, 74 N.Y.2d 372, 546 N.E.2d 920, 58 U.S.L.W. 2279
[6]
268K65
MUNICIPAL CORPORATIONS
K. Local legislation.
N.Y. 1989.
Legislature need not express its intent to preempt as that intent may be implied from the nature of the subject matter being regulated and the purpose and scope of the state legislative scheme, including the need for statewide uniformity in a given area. McKinney's Const. Art. 9, s 2(c)(ii).
Albany Area Builders Ass'n v. Town of Guilderland
547 N.Y.S.2d 627, 74 N.Y.2d 372, 546 N.E.2d 920, 58 U.S.L.W. 2279
[7]
268K65
MUNICIPAL CORPORATIONS
K. Local legislation.
N.Y. 1989.
Comprehensive, detailed statutory scheme may evidence an intent to preempt.
Albany Area Builders Ass'n v. Town of Guilderland
547 N.Y.S.2d 627, 74 N.Y.2d 372, 546 N.E.2d 920, 58 U.S.L.W. 2279
[8]
414K14
ZONING AND PLANNING
K. Concurrent and conflicting regulations.
N.Y. 1989.
Town's traffic impact fee law, which required person seeking building permit to make payments to be used by the town for future expansion of its transportation facilities, was preempted by state law. McKinney's Town Law ss 102, 104, 107-109; McKinney's Highway Law ss 141, 271, 284.
Albany Area Builders Ass'n v. Town of Guilderland
547 N.Y.S.2d 627, 74 N.Y.2d 372, 546 N.E.2d 920, 58 U.S.L.W. 2279

Kenneth D. Runion, for appellant.

James T. Potter and Kirk M. Lewis, Albany, for respondents.

A. Kevin Crawford and Donna M.C. Giliberto, for the Ass'n of Towns of the State of New York and another, amici curiae.

Terry Rice, for the New York Planning Federation and another, amici curiae.

OPINION OF THE COURT

KAYE, Judge.

The Town Board of defendant Town of Guilderland, a suburban community in Albany County, has projected that its population will increase substantially during the next 20 years, that such an increase will directly and adversely affect the existing transportation network, and that the road system would have to be expanded. The Board further found that current revenue sources were insufficient to fund the necessary capital improvements. On the stated theory that "[n]ew development should contribute its fair share of the costs of providing new facilities necessary to accommodate said new development," the Board adopted a local law entitled the Transportation Impact Fee Law (TIFL). The validity of that law is the issue before us today.

TIFL provides that applicants for building permits who seek to make a change in land use that will generate additional traffic must pay a transportation "impact fee" when the permit is issued. The size of the fee is determined by a detailed schedule set forth in the law, which assesses fees based on size and use of the proposed development--the intention being to impose on the fee payer only "the fair share cost of improved roadways necessitated by the new development." Alternatively, the law allows applicants to submit their own fee calculation study, but they must use a methodology prescribed in TIFL and must pay the Town 3% of the fee estimated by the independent study (up to $4,000) for "review and processing the study."

Limited credits are allowed for roadway improvements. Builders receive no credit, however, for site-related improvements, and the credits are available only as against specific portions of the total impact fee. To obtain the credit, the applicant must present cost estimates and property appraisals prepared by qualified professionals, and post a performance bond or irrevocable letter of credit equal to 110% of the cost of construction. Finally, TIFL provides that all fees collected are to be deposited in a trust fund maintained by the Town, and that the moneys shall be spent only for capital improvement, and for expansion of the roadway network and transportation facilities within the Town. No funds are to be used for routine maintenance.

Plaintiffs--two builders' associations and three individual building companies--have challenged the Town's authority to enact TIFL. They urge that the Town was without constitutional or statutory authority to enact TIFL, that impact fees are not permissible land use regulations, and that TIFL is both inconsistent with and preempted by existing State laws. The Town contends that TIFL is a permissible land use regulation authorized by section 10 of the Municipal Home Rule Law. The Appellate Division declared TIFL invalid, concluding that no statutory authority empowered the Town to enact the law, and that it is in any event preempted by the general laws regulating the funding of roadway improvements. 141 A.D.2d 293, 534 N.Y.S.2d 791. We granted leave to appeal, and now affirm on the second ground.

[1][2] It is a familiar principle that the lawmaking authority of a municipal corporation, which is a political subdivision of the State, can be exercised only to the extent it has been delegated by the State. While the Legislature has retained authority in matters of State concern, it has

empowered municipalities to legislate in a wide range of matters relating to local concern (see, Kamhi v. Town of Yorktown, 74 N.Y.2d ----, --- N.Y.S.2d ----, --- N.E.2d ---- [decided today]; New York State Club Assn. v. City of New York, 69 N.Y.2d 211, 217, 513 N.Y.S.2d 349, 505 N.E.2d 915, affd. 487 U.S. 1, 108 S.Ct. 2225, 101 L.Ed.2d 1). So long as local legislation is not inconsistent with the State Constitution or any general law, localities may adopt local laws both with respect to their "property, affairs or government" (see, N.Y. Const., art. IX, s 2[c][i]; Municipal Home Rule Law s 10[1][i]), and with respect to other enumerated subjects, except "to the extent that the legislature shall restrict the adoption of such a local law". (See, N.Y. Const, art. IX, s 2[c][ii]; Municipal Home Rule Law s 10[1][ii].) The Town urges that these home rule powers encompass TIFL.

In support of its position the Town points to provisions of the Municipal Home Rule Law that permit towns to enact local laws that relate to their "property, affairs or government" (s 10[1][i]); to the acquisition, care, management and use of local roads (s 10[1][ii][a][6]); to the acquisition, ownership and operation of transit facilities (s 10[1][ii][a][7]); to the fixing, levy, collection and administration of local government fees (s 10[1][ii][a][9-a]); and to the amendment or supersession, in their local application, of provisions of the Town Law (s 10[1][ii][d][3]). We need not decide whether TIFL in fact falls within any of these delegated powers, however, because it is in any event preempted by State law.

[3][4] The preemption doctrine represents a fundamental limitation on home rule powers (see, Dougal v. County of Suffolk, 65 N.Y.2d 668, 491 N.Y.S.2d 622, 481 N.E.2d 254, affg. on opn. at 102 A.D.2d 531, 532, 477 N.Y.S.2d 381; 5 McQuillin, Municipal Corporations s 15.20, at 101-104 [3d ed. 1989]). While localities have been invested with substantial powers both by affirmative grant and by restriction on State powers in matters of local concern, the overriding limitation of the preemption doctrine embodies "the untrammeled primacy of the Legislature to act * * * with respect to matters of State concern." (Wambat Realty Corp. v. State of New York, 41 N.Y.2d 490, 497, 393 N.Y.S.2d 949, 362 N.E.2d 581.) Preemption applies both in cases of express conflict between local and State law and in cases where the State has evidenced its intent to occupy the field (see, e.g., Matter of Lansdown Entertainment Corp. v. New York City Dept. of Consumer Affairs, 74 N.Y.2d 761, 545 N.Y.S.2d 82, 543 N.E.2d 725 [express conflict]; Consolidated Edison Co. v. Town of Red Hook, 60 N.Y.2d 99, 468 N.Y.S.2d 596, 456 N.E.2d 487 [intent to occupy the field]).

[5][6][7] Where the State has preempted the field, a local law regulating the same subject matter is deemed inconsistent with the State's transcendent interest, whether or not the terms of the local law actually conflict with a State-wide statute. Such local laws, "were they permitted to operate in a field preempted by State law, would tend to inhibit the operation of the State's general law and thereby thwart the operation of the State's overriding policy concerns." (Jancyn Mfg. Corp. v. County of Suffolk, 71 N.Y.2d 91, 97, 524 N.Y.S.2d 8, 518 N.E.2d 903.) Moreover, the Legislature need not express its intent to preempt (New York State Club Assn. v. City of New York, supra, 69 N.Y.2d at 217, 513 N.Y.S.2d 349, 505 N.E.2d 915). That intent may be implied from the nature of the subject matter being regulated and the purpose and scope of the State legislative scheme, including the need for State-wide uniformity in a given area (see, Robin v. Incorporated Vil. of

Hempstead, 30 N.Y.2d 347, 334 N.Y.S.2d 129, 285 N.E.2d 285). A comprehensive, detailed statutory scheme, for example, may evidence an intent to preempt.

[8] Applying these principles to the case at hand, we hold that the State Legislature has enacted a comprehensive and detailed regulatory scheme in the field of highway funding, preempting local legislation on that subject. By several provisions of the Town Law and Highway Law, the Legislature has evidenced its decision to regulate how roadway improvements are budgeted, how these improvements are financed, and how moneys for these improvements are to be expended.

With respect to the budget process, article 8 of the Town Law establishes an elaborate "budget system" (Town Law s 102), which delineates how towns are to budget for improvements and repairs to highways (see, Matter of Petito v. O'Keefe, 52 Misc.2d 28, 30, 275 N.Y.S.2d 106, affd. 26 A.D.2d 991, 275 N.Y.S.2d 802, lv. denied 18 N.Y.2d 583, 276 N.Y.S.2d 1026, 222 N.E.2d 746). Under that system, which requires disclosure of sources of revenue and proposed expenditures, towns are held accountable for public funds (see, e.g., Town Law ss 107, 108 and 109 [requiring preparation and disclosure of preliminary and final budgets and public hearings]). Indeed, Highway Law s 141, together with Town Law s 104, mandates that prior to the preparation of a town budget, the town superintendent submit an estimate showing the amount to be raised by taxation for the construction, improvement, maintenance and repair of town highways.

The Legislature has also explicitly limited the amount a town can raise by taxation for highway purposes (see generally, Matter of Flike v. Strobel, 252 App.Div. 35, 37, 297 N.Y.S. 412). Town Law s 107(3) provides that amounts to be raised by tax for highway purposes must be within the limitations of the Highway Law. Section 271 of the Highway Law, in turn, provides detailed restrictions on the amounts to be raised for improvements to highways, with varying limits depending on the town and the purpose of the improvement.

The manner in which funds are expended is also closely regulated by the Highway Law (see, Myruski v. Town Bd., 87 Misc.2d 1063, 386 N.Y.S.2d 984; Matter of Carlisle v. Burke, 82 Misc. 282, 144 N.Y.S. 163; 14 Opns.St.Comp. No. 58-184, at 72). Sections 284 through 285-a detail how funds are to be expended, requiring a written agreement between the town board, the town superintendent of highways, and the county superintendent of highways; funds for highway improvements may be paid out only "on vouchers approved by the town superintendent in accordance with such written agreement." (Highway Law s 284.)

These provisions of State law, which safeguard the public fisc, "are grounded in the general principles of fiscal responsibility and the accountability that underpins the regulation of all public conduct". (Matter of Korn v. Gulotta, 72 N.Y.2d 363, 373, 534 N.Y.S.2d 108, 530 N.E.2d 816; Coggeshall v. Hennessey, 279 N.Y. 438, 18 N.E.2d 652; see also, 14 Opns.St.Comp. No. 58-184, at 72.) The purpose, number and specificity of these statutes make clear that the State perceived no real distinction between the particular needs of any one locality and other parts of the State with respect to the funding of roadway improvements, and thus created a uniform scheme to regulate this subject matter (see, People v. De Jesus, 54 N.Y.2d 465, 468, 446 N.Y.S.2d 207, 430 N.E.2d 1260).

It is equally manifest that TIFL intrudes on the legislative scheme in at

least two significant respects. First, because TIFL directs moneys be paid into a separate fund, those moneys may escape the budgetary process established to regulate highway funding. Second, TIFL allows towns to evade statutory requirements for budgeting, accounting for revenues and documenting expenditures. In contrast to these directives, TIFL merely provides for payment into a trust fund, with funds to be used "for the purpose of capital improvements." Thus, as the Appellate Division correctly observed: "Permitting towns to raise revenues with impact fees would allow towns to circumvent the statutory restrictions on how money is raised and, further, would permit towns to create a fund of money subject to limited accountability, not subject to the statutory requirements governing how funds for highway improvements are spent." (141 A.D.2d 293, 300, 534 N.Y.S.2d 791 [citations omitted].)

We therefore conclude that the State has evidenced a purpose and design to preempt the subject of roadway funding and occupy the entire field, so as to prohibit additional local regulation.

In that TIFL is preempted by State law, we need not reach the controversial question propounded by the parties and amici--whether local "impact fees" are permitted by statute, a question that has been the subject of considerable comment [FN1] and litigation in other jurisdictions. [FN2]

FN1. See generally, Sweeney, The "Impact Fee", An Exciting and Troublesome Concept, 60 NYSBJ 52 (Oct.1988); Larsen & Zimet, Impact Fees: Et Tu, Illinois?, 21 J Marshall L.Rev. 489 (1988); Bauman & Ethier, Development Exactions and Impact Fees: A Survey of American Practices, 50 Law & Contemp.Probs. 51 (Winter 1987); Nicholas, Impact Exactions: Economic Theory, Practice, and Incidence, 50 Law & Contemp.Probs. 85 (Winter 1987); Juergensmeyer & Blake, Impact Fees: An Answer to Local Governments' Capital Funding Dilemma, 9 Fla.St. UL Rev. 415 (1981); Jacobsen & Redding, Impact Taxes: Making Development Pay its Way, 55 N.C.L.Rev. 407 (1977).

FN2. Compare, e.g., New Jersey Bldrs. Assn. v. Mayor of Bernards Twp., 108 N.J. 223, 528 A.2d 555, with Russ Bldg. Partnership v. City & County of San Francisco, 188 Cal.App.3d 977, 234 Cal.Rptr. 1, appeal dismissed 484 U.S. 909, 108 S.Ct. 253, 98 L.Ed.2d 211; and Call v. City of W. Jordan, 606 P.2d 217 (Utah).

Accordingly, the order of the Appellate Division should be affirmed, with costs.

WACHTLER, C.J., and SIMONS, ALEXANDER, TITONE, HANCOCK and BELLACOSA, JJ., concur.

Order affirmed, with costs.

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